**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application for revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka from the Judgment of the Provincial High Court of Anuradhapura dated 21.03.2014 in the Case No. පැ/5/2013

Court of Appeal Case No:
**CA (PHC) 29/2014**
HC Anuradhapura Case No:
**REV/05/2013**
MC Kekirawa Case No: **97814**

(1) Manikkuge Jayatillake,
Diyabetiyagama,
Negama,
Negampaha.(Deceased)
(2) Manikkuge Chandralatha,
Verunkulama,
Negama,
Negampaha.

**2nd Party-Petitioners-Appellants**

**-Vs-**

Mohamed Cassim Abdul,
Whahabdeen,
Borella, Negama,
Negampaha.

**1st Party-Respondent-Respondent**

**Before :** **A.L. Shiran Gooneratne J.**

**&**

**Mahinda Samayawardhena J.**

**Counsel :** Shayamal A. Collure with A.P. Jayaweera, P.S. Amarasinghe and Ravindra S. de Silva for the 2nd Party-Petitioner-Appellants.

Faris Saly with Shanesh Dissanayake, Sumarya Jifry, Fathima Asna and Melani Perera for the 1st Party-Respondent-Respondent.

**Written Submissions:** By the 1st Party-Respondent-Respondent on 23/01/2019

By the 2nd Party-Petitioners-Appellants on 14/11/2019

**Argued on :** 31/10/2019

**Judgment on :** **06/12/2019**





**A.L. Shiran Gooneratne J.**

On a complaint received from the 1st Party-Respondent, the Officer-in-Charge of the Galnewa Police filed an information report in terms of Section 66(1)(a) of the Primary Courts Procedure Act against the 2nd Party-Petitioners-Appellants (hereinafter referred to as the Appellants) and the 1st Party-Respondent-Respondent (hereinafter referred to as the Respondent) in the Magistrates Court of Kekirawa over a disputed possession of a land. The learned Magistrate by order dated 15/01/2013, granted possession to the Respondent. Being aggrieved by the said order the Appellant filed a revision application in the

Provincial High Court of the North Central Province holden in Anuradhapura. The Provincial High Court by its order dated 21/03/2014, affirmed the order of the learned Magistrate. It is against that order the Appellants are before this Court.

The instant application seeks to challenge the said order based on the failure to identify the corpus in dispute.

The information filed by the police dated 28/08/2012, describes the disputed land as a bear land. The schedule to the said information clearly indicates the boundaries of the said land. It is noted that, the Appellant resides in a railway reservation, to the East of the disputed land. The boundaries are clearly described in the affidavits filed by the Appellants in the Magistrates Court. It is also observed that, the identification of the corpus as described in the information filed by the investigating officer was never disputed by the Appellant by evidence or by material facts before the learned Magistrate. Even though the counsel for the Appellants contends that they were in possession of the land in dispute, the available materiel does not clearly support such a claim.



The Appellants claimed that they have been in possession of the disputed land and had constructed a house in which they lived for over 22 years. It is further claimed that when the house was destroyed by a fire they moved out of the land and re-entered it in order to clear the over growth and to re-build the house. The Appellants further submit that they purchased the disputed land 25 years ago, however, no documentary evidence to prove such claim was tendered before

Court. It is noted that, the information filed by the investigating officer does not indicate any remnant of a burnt house or any previous construction to be observed as claimed, in the said land. In such disputes, *"The central matter to be decided by the Primary Court is whether the parties had possession of the land and had been forcibly dispossessed within a period of two months immediately before the date on which information was filed under the Section 66."* ***(Oliver Millous of France Vs. M.H.A. Haleem and Others, (2001) B.L.R. Page 8)***

Having considered the available evidence the learned Magistrate has arrived at a conclusive finding that the Appellants were not forcibly dispossessed from the land two months immediately prior to the filing of the police information.

The Respondent relies on a letter by the Galgoda Kumbukwewa Farmer Organization marked P5, which states that the Respondent has been cultivating the disputed land for 20-25 years and the Appellants have encroached the said land. The Court has also considered a letter written by the former Grama Sevaka of the area marked P7, where it is stated that the Appellant co-owns the disputed land, which he inherited from his father and has cultivated for 24 years. The land grant deed bearing No. 13697, marked P8, is filed of record.

The learned Magistrate after having considered the affidavits and the supporting documents of both parties has come to a clear and a correct finding that the Respondent should be placed in possession of the disputed land.

Therefore, I find that the land in dispute has been correctly identified with the available evidence in the police information and the affidavits filed of record. The evidence does not substantiate the claim of the Appellants that they were in possession of the said land and/ or forcibly dispossessed at any time prior to encroachment as alleged in the police information dated 28/08/2012.

In the circumstances, I have no reason to disagree with the findings of the learned High Court Judge or the learned Magistrate.

The Appeal is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**Mahinda Samayawardhena, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**